IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Mod Singh.
vs.
Balu and others.

S.B.CIVIL SECOND APPEAL NO.87/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 4.11.2003 PASSED BY SHRI N.L. CHAMPAWAT, ADDITIONAL DISTRICT JUDGE NO.2, CHITTORGARH IN CIVIL APPEAL NO.7/2001.

DATE OF JUDGMENT ::: 24.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.SL Jain, for the appellant.
None present for the respondents.

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BY THE COURT:

Heard learned counsel for the appellant as nobody appeared on behalf of the respondents despite service of summons upon them.

The only grievance of the appellant/plaintiff is that the two courts below concurrently held that the appellant is entitled to use the way from the land of the respondents which has been described by the appellant in the map annexed with the plaint. The trial court granted the decree without specifying the width of the way and according to the appellant, the appellant's land is agriculture land and he sought relief of injunction against the defendants/respondents that they should not obstruct the way of the appellant from the agriculture fields of the respondents.

It is submitted that the way for agriculture land cannot be only a pedestrian's way. The first appellate court in the appeal preferred by the respondents while dismissing the appeal on all the questions of facts restricted the way of the appellant's agriculture field only to a width to the extent of way over which the plaintiff can walk on his foot only. The appellate court also restricted that the way should not be beyond the width which can be used by not even bullock cart but which can be used only to take the bulls. Meaning thereby, no mode of transportation shall be available for transporting the plaintiff's crops. Not only this, but by this restriction, the appellant will not be able to cultivate his land by tractor. It is submitted that when one is seeking way to the agriculture field, then it impliedly means the way for using agriculture field

and not for visiting a residential house where one can go on foot by leaving his vehicle somewhere else in the side of road etc.

According to learned counsel for the appellant, the first appellate court has not assigned any reason why such a short way has been provided to the appellant. It is also submitted that once the courts below concurrently held that the appellant is entitled to way for his agriculture field from the agriculture field of the defendant, then the Court should have granted decree for way to the extent by which the agriculture field can be used.

I considered the submissions of learned counsel for the appellant and perused the two judgments of the courts below as well as the record.

The appellant/plaintiff's case virtually was admitted by defendant no.3 Nana. Both the courts below concurrently held that the plaintiff is entitled to the way from field of the respondents then the way can be only which can serve the purpose for which the relief has been sought. Normally for the way for agriculture land, it cannot be less than the way over which a tractor can pass.

In view of the above, the only substantial

question of law framed by this Court on 2.8.2005 is decided in favour of the appellant.

Consequently, this second appeal is allowed, the decree of the first appellate court is modified and it is held that the plaintiff/appellant shall be entitled to have the way of the width of 10 feet from the field of the defendants/respondents in the direction as is given in the map annexed with the plaint.

(PRAKASH TATIA), J.

S.Phophaliya